

IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

WEDNESDAY, THE TWENTY THIRD DAY OF FEBRUARY
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE SRI DEVINDER GUPTA, THE CHIEF JUSTICE

and

THE HON'BLE MR JUSTICE B.SESHASAYANA REDDY

WRIT APPEAL NO : 292 of 2005

(Writ Appeal under Clause 15 of the Letters Patent against the Order dated
13/12/2004 in WP No: 23316 OF 2003 on the file of the High Court.)

Between:

Gollapally Kanthamma, W/o. Narsimha Reddy,
R/o. Klurugunta Vill, Anantapur Mandal, Anantapur District, Card Holder No.
201872.

..... APPELLANT

AND

- 1 M. Lakshminarayana, S/o. M. Narayanappa,
R/o. Kurugunta Village, Anantapur Mandal, Anantapur District.
- 2 The District Collector, Anantapur.
- 3 The Joint Collector, Anantapur, Anantapur District.
- 4 The Revenue Divisional Officer, Anantapur, Anantapur District.
- 5 The Mandal Revenue Officer, Anantapur District, Anantapur.

.....RESPONDENTS

Counsel for the Appellant: MRV.L.SURENDER

Counsel for the Respondent No.1: MR.O.MANOHER REDDY

Counsel for the Respondent Nos. 2 to 5: G.P. for Civil Supplies

The Court Made the Following Oral Order: (Per Sri Devinder Gupta, CJ))

Appeal has been preferred by the cardholder with the leave of the Court to question the order passed by the learned single judge allowing writ petition of the 1st respondent and thereby setting aside the order passed by the respondent-authorities.

At the very outset, objection has been raised by learned counsel for Respondent No.1 about maintainability of the appeal by Cardholder on the ground that a Cardholder under the provisions of the Essential Commodities Act, 1955 (for short 'the Act') and the A.P.P.P. (L&RS) Order, 1980, (hereinafter referred to as " the Order") has not been given any right of appeal either against the order passed by the primary authority or against the order of the appellate authority or the revisional authority. Therefore, Cardholder will have no locus standi to question the order passed by the learned single Judge since Cardholder cannot be said to be a person aggrieved.

Such an objection raised has to be turned down on the ground that Cardholders are the beneficiaries of the services which are made available to them by the fair price shop dealers appointed under the Order. It is for their benefit that a fair price shop dealer is appointed, and, in case, action is taken against the fair price shop dealer under the provisions of the Order for violation of the terms and conditions of appointment, and for one reason or the other, such an order is set aside in appeal or revision or even in a writ petition, the Cardholder will definitely be a person aggrieved, since Cardholder will know better about the conduct of the fair price shop dealer in supplying essential commodities. Therefore, the objection of maintainability of the writ appeal is turned down.

In the instant case, pursuant to the report of Mandal Revenue Officer, dated 4.4.1999, that the 1st respondent had diverted kerosene oil to the tune of 108 Ltrs., into black market for pecuniary gains and thereby contravened Clause 28 of the Order and has also diverted blue dyed kerosene oil meant for ration cardholders under Public Distribution System for pecuniary gains to Sri Narayana Swamy of Anantapur, which fact was confirmed by the auto owner-cum driver, thereby, violated condition No.13 of the authorization and Condition No.7(1) of the licence granted to

a dealer, his licence was suspended with immediate effect and was also directed to show cause within seven days as to why his fair price shop dealership authorization be not cancelled. This order was passed by the Revenue Divisional Officer, Anantapur, on 9.4.1999, against which reply was submitted by the 1st respondent and, ultimately, on 26.2.2000, an order was passed cancelling fair price shop authorization of the 1st respondent for the alleged irregularities committed by him in distribution of essential commodities. Feeling aggrieved, appeal was preferred by the 1st respondent to the Joint Director, Anantapur. Appeal was dismissed on 31.3.2003. Against the said order, revision was preferred before the Collector and District Magistrate, Anantapur. The revision was also dismissed on 18.10.2003. Feeling aggrieved, 1st respondent filed Writ Petition No. 23316 of 2003 before this Court.

Learned single judge by the order impugned in this writ appeal, allowed the writ petition holding that only on the basis of ex-parte report of Mandal Revenue Officer, the Collector in revision had come to the conclusion as to the mis-conduct of the 1st respondent on allegations which were not even put to him in the show cause notice of the Revenue Divisional Officer, dated 9.4.1999. The entirety of the proceedings of the District Collector, Joint Collector and the Revenue Divisional Officer were perverse. Principles of natural justice were given a go bye. Instead of conducting an enquiry into the simple issue as to mis-conduct or irregularity, by violation of principles of natural justice, official respondents have passed the orders without affording any opportunity to the 1st respondent. Thus, while setting aside those orders, learned single judge instead of permitting the official respondents to pass fresh orders in accordance with law, examined the merits and held that proceedings could not have been initiated against the 1st respondent. Thus, feeling aggrieved, cardholder has preferred this appeal.

We have heard the learned counsel for the parties and gone through the record.

The impugned show cause notice was issued only on two charges. Even the primary authority while deciding the case on merits took notice of the previous conduct of 1997 also against the 1st respondent without calling for any explanation and without affording any opportunity of hearing to him. The appellate authority did not go into any of the questions and merely confirmed the order of the primary

authority. But, in revision, the Collector called for fresh report and without making that report available to the 1st respondent, proceeded to pass orders. The other grounds urged were not mentioned in the show cause notice. In case, the authorities had to make use of the previous conduct of the 1st respondent and of any other material, it was but necessary that 1st respondent ought to have been issued a show cause notice and after hearing him, appropriate orders ought to have been passed. Thus, the learned single judge was justified in setting aside the order of the official authorities, but was not justified in restoring the licence which was suspended during the pendency of enquiry and to that effect, the order of the leaned single judge requires modification.

The writ appeal is accordingly allowed in part. The order impugned in the appeal is modified and the orders passed by the three official authorities, dated 26.2.2000, 31.3.2003 and 18.10.2003 are set aside. Resultantly, the Revenue Divisional Officer, Anantapur is directed to issue a fresh show cause notice to Respondent No.1 calling upon him to submit his reply and thereafter to decide the case in accordance with law. The Revenue Divisional Officer will conclude the enquiry and pass appropriate orders in accordance with law within a period of three months from the date of receipt of Writ Order from the Court. Till the enquiry is conducted and finalized, the order of suspension shall continue to remain in operation.

The writ appeal is accordingly allowed in part. No costs.

DEVINDER GUPTA,CJ

DATE: 23rd February, 2005

B. SESHASAYANA REDDY,J

To

- 1 The District Collector, Anantapur.
- 2 The Joint Collector, Anantapur, Anantapur District.
- 3 The Revenue Divisional Officer, anantapur, Anantapur District.
- 4 The Mandal Revenue Officer, Anantapur District, Anantapur.
- 5 Two C.D. copies.